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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 1079[redacted]

GROVER G. ALEXANDER, *Petitioner*

v.

CHARLES SHARPE, *Respondent*

STATE OF MAINE, *Respondent*

v.

GROVER G. ALEXANDER, *Petitioner*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE

REPLY BRIEF

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February 13, 1970

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Respondent has filed a MOTION TO DISMISS as well as a BRIEF IN OPPOSITION.

The Petitioner respectfully points out that *Rule 24* expressly provides that: *"No Motion by a respondent to dismiss a petition for certiorari will be received."* The argument contained in the Motion should have been set forth in the Brief or a supplemental thereto.

MOTION TO DISMISS

With respect to the Motion to Dismiss, Petitioner replies as follows:

The original Petition for Certiorari was reasonably filed on January 15, 1970. Petitioner added supplemental material and caused the Petition to be printed in regular form. Thereafter, on January 23, 1970, Petitioner substituted the printed Petition for the original and served copies on Counsel for the Respondent. The substitution was made with permission of the Clerk. And after the objection to the substitution was raised by Respondent, Petitioner caused the original Petition to be printed and filed.

The substituted Petition contains the same basic facts, contentions and arguments as are set forth in the original Petition. The additions are for the most part references and direct quotes from the record as well as enlargement of the basic arguments. The deletions and changes in sentence structures were necessary for composition and continuity.

Petitioner feels that there has been compliance with the Rules; and particularly that no prejudice has resulted to the Respondent. Petitioner therefore askes that the Petition not be denied on this ground.

BRIEF IN OPPOSITION

With respect to the Brief in Opposition, Petitioner replies as follows:

Jurisdiction

Petitioner is seeking a review of the Opinion dated October 20, 1969. All of the questions and arguments are addressed to that Opinion. However, the Opinion of October, 1969 must be read and discussed in conjunction with the Opinion of August, 1968 in that the former incorporates and passes upon in part the constitutional questions raised by reference to the legal principles set forth in the

latter. APPENDIX 2, page 17a. Moreover, Rule 23(i) seems to require . . . ."opinions in companion cases." It would seem that this matter became ripe for review finally on October 20, 1969. And failure of the Maine Court to pass upon constitutional questions properly raised is as good a basis for the jurisdiction of this Honorable Court as the Maine Court to have decided such questions erroneously.

QUESTONS PRESENTED

Respondent in this connection has failed to present a substantial question for the Court's consideration. Petitioner relies on the questions set forth in the Petition.

STATEMENT OF THE CASE

Counsel for Respondent suggests that Petitioner has "misstated" the facts with respect to the courtroom incident. It is interesting to note, however, that there is no explicit denial of the cause of conduct Petitioner attributes to the Trial Judge. The factual over-simplicification set forth on Page 7 of the Brief is hardly worthy of this Court's consideration.

ARGUMENT

I

Petitioner respectfully urges that he is seeking review of the final Opinion of October 20, 1969. Respondent surely must recognize the desirability and propriety of the inclusion and reference to the Opinion of August 15, 1968.

II

The Record *does* support Petitioner in his recitation of the facts.

III

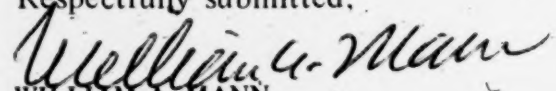
Petitioner is *not* "unsure about his challenge to the opinions below." The headings used in the Petition under "REASONS FOR GRANTING WRIT" were taken directly from the language and suggested forms contained in *Stern and Gressman.* Use of the word, *probably*, is not an indication of Petitioner's questionable position as Respondent suggests. The usage was taken directly from Rule 19, 1-(a). Petitioner anticipates that this Court will decide whether or not the Opinion of October 20, 1969 is erroneous. Until that time we will have to be content with our contention that the Opinion is "probably not in accord with applicable decisions of the Supreme Court of the United States."

Finally, in this connection Petitioner feels that the federal question of trial by jury is adequately raised. We are at a loss to understand the statement of Respondent at page 15 of the Brief wherein he says, ". . . .No federal question is raised." This Court is respectfully referred to Questions No. 2 and No. 6 under "QUESTIONS PRESENTED" in the Petition and the discussion of the jury trial issue under "REASONS FOR GRANTING WRIT."

CONCLUSION

The Writ should be granted for the reasons set forth in the Petition.

Respectfully submitted,



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